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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,878	03/15/2001	James H. Pickar	AM100226	5270
26646	7590	10/14/2005	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			WANG, SHENGJUN	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR  
41.37(c)

The Examiner's Answer mailed April 12, 2005 is withdrawn in favor of following action.

Appellant filed an Appeal Brief under the rules set forth in 37 CFR § 1.192(c) on October 19, 2004. However, the rules under 35 U.S.C. § 1.192(c) were abolished on September 13, 2004, and replaced by 37 CFR § 41.37(c), which states:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(i) Real party in interest. A statement identifying by name the real party in interest.

(ii) Related appeals and interferences. A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(x) of this section.

(iii) Status of claims. A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

(iv) Status of amendments. A statement of the status of any amendment filed subsequent to final rejection.

(v) Summary of claimed subject matter. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means

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plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

(vi) Grounds of rejection to be reviewed on appeal. A concise statement of each ground of rejection presented for review.

(vii) Argument. The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for patentability of the claim.

(viii) Claims appendix. An appendix containing a copy of the claims involved in the appeal.

(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the

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record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) Related proceedings appendix. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

A review of the application reveals that the following sections are missing from the Appeal Brief:

- (1) "Summary of claimed subject matter" as set forth in 37 CFR § 41.37(c)(1)(v);
- (2) "Grounds of rejection to be reviewed on appeal" as set forth in 37 CFR § 41.37(c)(1)(vi) (replaced "Issues for Review" and "Grouping of Claims");
- (3) "Claims appendix," as set forth in 37 CFR § 41.37(c)(1)(viii) (replaced "Appendix;")
- (4) "Evidence appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and
- (5) "Related proceedings appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

Accordingly, the Appeal Brief filed on October 28, 2004 does not comply with the new rules under 37 CFR § 41.37(c). It is required that a substitute Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c). For more information on the

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Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:  
<http://usoto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>

Appellant is required to comply with provisions of 37 CFR 41.37(c). To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 41.37(c) within ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication. Extensions of time may be granted under 37 CFR 1.136.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang whose telephone number is (571) 272-0632. The examiner can normally be reached on Monday to Friday from 7:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**SHENGJUN WANG**  
**PRIMARY EXAMINER**  
Shengjun Wang  
Primary Examiner  
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